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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

ERIC LLOYD,

Defendant.

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Case No. 1710006739

NOTICE OF MOTION

TO: Mark A. Denney, Jr., Esq.  
Deputy Attorney General  
Department of Justice  
Criminal Division  
Carvel State Office Building  
7th Floor  
820 North French Street  
Wilmington, DE 19801

PLEASE TAKE NOTICE that the attached Motion for Reduction of Bail  
will be presented to the Court on Tuesday, January 9, 2018 at 9:30 a.m.

JOSEPH W. BENSON, P.A.

  
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jbenenson@jwbpa.com  
Attorney for Defendant  
Eric Lloyd

2018 JAN -2 PM 3:00

FILED  
CLERK OF COURT  
JAN 2 2018

Dated: January 2, 2018

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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v.

ERIC LLOYD,

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**MOTION FOR REDUCTION OF BAIL**

Defendant Eric Lloyd, by his undersigned attorney, hereby moves the Court for the entry of an Order reducing his bail. In support of this motion, the defendant sets forth the following:

1. Defendant Eric Lloyd ("Lloyd") stands charged by Indictment with three offenses: Conspiracy to Commit Racketeering in violation of 11 Del.C. § 1503, Money Laundering in violation of 11 Del.C. § 951, and Conspiracy 2<sup>nd</sup> degree in violation of 11 Del.C. § 512.

2. Mr. Lloyd was arrested on or about November 8, 2017 on a Rule 9 warrant. Bail was set by Commissioner Katharine L. Mayer at \$500,000.00 cash and redistributed on November 28, 2017 as the result of a Reindictment returned on or about November 13, 2017.

3. The amount of the bail far exceeds the SENTAC Recommended Monetary Ranges for these charges. The current SENTAC Guidelines (2017 ed., at 179) are:

Racketeering Conspiracy	Class B felony	\$20,000 to \$60,000
Money Laundering	Class D felony	\$2,500 to \$10,000
Conspiracy 2 <sup>nd</sup>	Class G felony	\$500 to \$2,000
Total:		\$23,000 to \$72,000

4. Mr. Lloyd had been employed full-time at the time of his arrest with G. Fedale Roofing and Siding, an established company located in Newport, Delaware. A letter from the owner, Glenn Fedale, confirms Mr. Lloyd's value to the business and confirms that his position

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DELAWARE

remains open. A copy of the letter is attached as Exhibit A. Additional letters of support from members of the community familiar with Mr. Lloyd and his volunteer activities are attached as Exhibit B.

5. Mr. Lloyd is currently serving a period of probation in nearby Pennsylvania but these new charges do not violate his probation because the conduct alleged in the reindictment preceded the imposition of probation. He is, nonetheless, in good standing with his probation officer.

6. Mr. Lloyd is also on supervised release with the Delaware federal court. He is in good standing with his federal probation officer, and no violation report has been filed consistent with the practice of the U.S. Probation office to issue a report only if the probationer is convicted of new charges.

7. The setting of bail in the State of Delaware is controlled and guided by four sources: (1) the Eighth Amendment to the U.S. Constitution; (2) Article I, Sections 11 and 12 of the Delaware Constitution; (3) the statutory provisions in Del Code Ann. tit. 11, § 2101, *et seq.*; and (4) the Justice of the Peace Bail Guidelines provided as a convenience by the Delaware Sentencing Accountability Commission (SENTAC).

#### **A. The U. S. Constitution**

8. The Eighth Amendment became the law of the land when the first ten amendments to the U.S. Constitution, commonly known as the Bill of Rights, were ratified on December 15, 1791. The amendment states:

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments imposed. (emphasis added)*

#### **B. The Delaware Constitution**

9. Article I, Section 11 of the Constitution of the State of Delaware, as adopted in 1897 (and as it also existed in the Constitutions of 1792 and 1831), states:

Section 11. *Excessive bail shall not be required*, nor excessive fines imposed, nor cruel punishments inflicted; and in the construction of jails a proper regard should be had to the health of prisoners. (emphasis added)

Article I, Section 12 of the Constitution of the State of Delaware, as adopted in 1897 (and as it also existed in the Constitutions of 1792 and 1831), states:

Section 12. *All prisoners shall be bailable by sufficient sureties*, unless for capital offenses when the proof is positive or the presumption great; and when persons are confined on accusation for such offenses their friends and counsel may at proper seasons have access to them. (emphasis added)

10. These provisions may also be found in the 1776 Constitution of the Commonwealth of Pennsylvania, and may further be "traceable to early colonial laws applicable to Pennsylvania and the 'three lower counties'." Quillen v. Betts, 98 A.2d 770, 772 (Del. 1953)

### **C. The Delaware Code**

11. Chapter 21 of Title 11 of the Delaware Code (11 *Del.C.* § 2101, *et seq.*) is entitled "Release of Persons Accused of Crimes". The first section of that statute states:

#### **§ 2101 Purposes of this chapter**

It is the purpose of this chapter to reform the system of bail in the various courts of this State and to empower and equip the courts to utilize a system of personal recognizance or an unsecured personal appearance bond to be used wherever feasible consistent with a reasonable assurance of the appearance of the accused and the safety of the community in connection with the release of persons accused of crime pending a final determination of the court as to the guilt of such persons.

12. Section 2104(a) of the same statute states that:

Any person who is arrested and charged with any crime other than a capital crime shall be released either:

- (1) On the person's own recognizance; or
- (2) Upon the execution of an unsecured personal appearance bond of the accused in an amount specified by the court; or

- (3) Upon the execution of a secured personal appearance bond, the amount of the bond and the nature of the surety to be determined by the court; or  
(4) Upon the execution of a cash personal appearance bond, the amount of the bond to be determined by the court.

13. The foregoing is consistent with the longstanding practice in this State, consistent with the federal and State Constitutions, to set reasonable bail to allow the accused, who is presumed innocent, to avoid unnecessary incarceration and to permit him to adequately prepare his defense. U.S. ex rel. Priest v. Department of Corrections of State of Del. ex rel. Nardini, 268 F.Supp. 242 (D.Del. 1967), *affirmed* 390 F. 2d 150 (3rd Cir. 1967).

14. Furthermore, § 2107 states that "... the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the accused, compliance with the conditions set forth in the bond and the safety of the community."

15. Lloyd acknowledges that under § 2107(c) the presumption is that a cash personal appearance bond will be set. He nonetheless believes that the amount of the bond is excessive.

#### **D. The Sentencing Accountability Commission (SENTAC)**

16. Mindful of the directives of the statute, the SENTAC Benchbook (2017 ed.) contains a section beginning at page 176 setting forth policy considerations and guidelines promulgated by the Justice of the Peace courts to consider when setting bail. The Policy Statement on page 176 states, *inter alia*, that "[p]resumptive bail under Delaware law is to release upon a defendant's own recognizance or upon an unsecured appearance bond" and that departure is "permissible **only** if a totality of the circumstances analysis determines that secured bail is necessary. . . ." (emphasis in original) Courts are directed to consider and weigh "all legally relevant factors" before setting bail. Further, "the judicial officer must balance the rights of the defendant" which are specified:

to be presumed innocent,

to be at liberty while awaiting trial,  
to develop a defense,  
to provide financial and other support for family, and  
to preclude pressure to resolve the case to escape confinement.

These factors are to be balanced with the State's interests:

to ensure the defendant appears to answer to criminal charges,  
to protect victims, witnesses, and the community, and  
to ensure the proper administration of justice.

The Policy Statement further states that the judicial officer must "focus on **all** the factors legally relevant to a bail decision, not on a single factor, such as the nature of the charged offense."

(emphasis in original)

17. This "balanced assessment of the relative weights" of all of the various factors is the required analysis. SENTAC Benchbook at 176, citing Illinois v. Gates, 462 U.S. 213, 234 (1983). Judges are also directed to "consider that the total bail amount for the entire case should be reasonable under all the circumstances; . . . " (at 177).

**WHEREFORE**, Defendant Eric Lloyd requests that the Court enter an order reducing his bail to an amount with conditions satisfactory to the court under the totality of the circumstances and pursuant to the provisions of 11 Del.C. § 2101 *et seq.* and the SENTAC Bail Guidelines, which may include:

- no contact with the victim and the co-defendants;
- pre-trial supervision with random drug and alcohol testing;
- no leaving the State of Delaware except with the explicit permission of Pre-trial Services for a defined purpose and period of time;
- passport turned in to Pre-trial Services;
- GPS monitoring;

- curfew from 8:00 p.m. to 6:00 a.m. or such other times as are appropriate for employment activities.

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Eric Lloyd

Dated: January 2, 2018